

Child Pornography Possession Statutes

Updated March 2010

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ALABAMA

ALA. CODE § 13A-12-192 (2009). Possession of obscene matter.

(a) Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same.

(b) Any person who knowingly possesses any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct shall be guilty of a Class C felony.

ALASKA

ALASKA STAT. § 11.61.127 (2009). Possession of child pornography

(a) A person commits the crime of possession of child pornography if the person knowingly possesses any material that visually or aurally depicts conduct described in [AS 11.41.455\(a\)](#) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to persons providing plethysmograph assessments in the course of a sex offender treatment program that meets the minimum standards under [AS 33.30.011\(5\)](#).

(c) Each film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts conduct described in [AS 11.41.455\(a\)](#) that is possessed by a person knowing that the production of the material involved the use of a child under 18 years of age that engaged in the conduct is a separate violation of this section.

(d) Possession of child pornography is a class C felony.

ARIZONA

ARIZ. REV. STAT. § 13-3553 (2008). Sexual exploitation of a minor; evidence; classification

Text of section effective January 1, 2009. For section effective until January 1, 2009, see the preceding version.

A. A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

B. If any visual depiction of sexual exploitation of a minor is admitted into evidence, the court shall seal that evidence at the conclusion of any grand jury proceeding, hearing or trial.

C. Sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to section 13-705.

ARKANSAS

ARK. CODE ANN. § 5-27-304. Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child

(a) With knowledge of the character of the visual or print medium involved, no person shall do any of the following:

(1) Knowingly advertise for sale or distribution, sell, distribute, transport, ship, exhibit, display, or receive for the purpose of sale or distribution any visual or print medium depicting a child participating or engaging in sexually explicit conduct; or

(2) Knowingly solicit, receive, purchase, exchange, possess, view, distribute, or control any visual or print medium depicting a child participating or engaging in sexually explicit conduct.

(b) Any person who violates subdivisions (a)(1) or (2) of this section is guilty of a:

(1) Class C felony for the first offense; and

(2) Class B felony for a subsequent offense.

ARK. CODE ANN. § 5-27-602 (2009). Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child.

(a) A person commits distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child if the person knowingly:

(1) Receives for the purpose of selling or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers, or agrees to offer through any means, including the internet, any photograph, film, videotape, computer program or file, video game, or any other reproduction or reconstruction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct; or

(2) Possesses or views through any means, including on the internet, any photograph, film, videotape, computer program or file, computer-generated image, video game, or any other reproduction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct.

(b) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child is a:

(1) Class C felony for the first offense; and

(2) Class B felony for any subsequent offense.

(c) It is an affirmative defense to a prosecution under this section that the defendant in good faith reasonably believed that the person depicted in the matter was seventeen (17) years of age or older.

CALIFORNIA

CAL. PENAL CODE § 311.11 (2009). Possession or control of child pornography; Persons previously convicted guilty of felony

(a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment.

(b) Every person who commits a violation of subdivision (a), and who has been previously convicted of a violation of this section, an offense requiring registration under the Sex Offender Registration Act, or an attempt to commit any of the above-mentioned offenses, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

COLORADO

Colo. Rev. Stat. § 18-6-403 (2008). Sexual exploitation of children

(1) The general assembly hereby finds and declares: That the sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of

eighteen years is incapable of giving informed consent to the use of his or her body for a sexual purpose; and that to protect children from sexual exploitation it is necessary to prohibit the production of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

(1.5) The general assembly further finds and declares that the mere possession or control of any sexually exploitative material results in continuing victimization of our children by the fact that such material is a permanent record of an act or acts of sexual abuse of a child; that each time such material is shown or viewed, the child is harmed; that such material is used to break down the will and resistance of other children to encourage them to participate in similar acts of sexual abuse; that laws banning the production and distribution of such material are insufficient to halt this abuse; that in order to stop the sexual exploitation and abuse of our children, it is necessary for the state to ban the possession of any sexually exploitative materials; and that the state has a compelling interest in outlawing the possession of any sexually exploitative materials in order to protect society as a whole, and particularly the privacy, health, and emotional welfare of its children.

(2) As used in this section, unless the context otherwise requires:

(a) "Child" means a person who is less than eighteen years of age.

(b) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human breasts, or the undeveloped or developing breast area of the human child, for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt

sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

(I) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(II) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) "Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

(3) A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:

(a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material; or

(b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(b.5) Possesses or controls any sexually exploitative material for any purpose; except that this paragraph (b.5) does not apply to peace officers or court personnel in the performance of their official duties, nor does it apply to physicians, psychologists, therapists, or social workers, so long as such persons are licensed in the state of Colorado and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site; or

(c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

(4) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(5) The sexual exploitation of a child is a class 3 felony; except that sexual exploitation of a child by possession of sexually exploitative material pursuant to paragraph (b.5) of subsection (3) of this section is a class 6 felony, but a second or subsequent offense by such possession or a first or subsequent offense of possession of more than twenty different items qualifying as sexually exploitative material is a class 4 felony.

(6) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

CONNECTICUT

CONN. GEN. STAT. ANN. § 53a-196d (2008). Possessing child pornography in the first degree: Class B felony.

(a) A person is guilty of possessing child pornography in the first degree when such person knowingly possesses fifty or more visual depictions of child pornography.

(b) Possessing child pornography in the first degree is a class B felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.

CONN. GEN. STAT. ANN. § 53a-196e (2008). Possessing child pornography in the second degree: Class C felony.

(a) A person is guilty of possessing child pornography in the second degree when such person knowingly possesses twenty or more but fewer than fifty visual depictions of child pornography.

(b) Possessing child pornography in the second degree is a class C felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which two years of the sentence imposed may not be suspended or reduced by the court.

CONN. GEN. STAT. ANN. § 53a-196f (2008). Possessing child pornography in the third degree: Class D felony.

(a) A person is guilty of possessing child pornography in the third degree when such person knowingly possesses fewer than twenty visual depictions of child pornography.

(b) Possessing child pornography in the third degree is a class D felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which one year of the sentence imposed may not be suspended or reduced by the court.

CONN. GEN. STAT. ANN. § 53a-196g (2008). Possessing child pornography: Affirmative defenses.

In any prosecution for a violation of section 53a-196d, 53a-196e or 53a-196f, it shall be an affirmative defense that (1) the defendant (A) possessed fewer than three visual depictions of child pornography, (B) did not knowingly purchase, procure, solicit or request such visual depictions or knowingly take any other action to cause such visual depictions to come into the defendant's possession, and (C) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof, took reasonable steps to destroy each such visual depiction or reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction, or (2) the defendant possessed a visual depiction of a nude person under sixteen years of age for a bona fide artistic, medical, scientific, educational, religious, governmental or judicial purpose.

DELAWARE

DEL. CODE ANN. tit. 11, § 1109 (2009). Dealing in child pornography; class B felony.

A person is guilty of dealing in child pornography when:

(1) The person knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any "book, magazine, periodical, pamphlet, video or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(2) The person knowingly receives for the purpose of selling or sells any magazine, photograph or film which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly receives for the purpose of selling or sells any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(3) The person knowingly distributes or disseminates, by means of computer or any other electronic or digital method, or by shows or viewings, any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or the simulation of such an act. The possession or showing of such motion pictures shall create a rebuttable presumption of ownership thereof for the purposes of distribution or dissemination;

(4) The person, intentionally compiles, enters, accesses, transmits, receives, exchanges, disseminates, stores, makes, prints, reproduces or otherwise possesses any photograph, image, file, data or other visual depiction of a child engaging in a prohibited sexual act or

in the simulation of such an act. For the purposes of this subsection, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if such photograph, image, file or data was compiled, entered, accessed, transmitted, received, exchanged, disseminated, stored, made, printed, reproduced or otherwise possessed by, through or with any computer located within Delaware and the person was aware of circumstances which rendered the presence of such computer within Delaware a reasonable possibility; or

(5) The person knowingly advertises, promotes, presents, describes, transmits or distributes any visual depiction, exhibition, display or performance with intent to create or convey the impression that such visual depiction, exhibition, display or performance is or contains a depiction of a child engaging in a prohibited sexual act or in the simulation of such an act.

Unlawfully dealing in child pornography is a class B felony.

DEL. CODE ANN. tit. 11, § 1110 (2009). Subsequent convictions of § 1108 or § 1109 of this title

Any person convicted under § 1109 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be guilty of a class B felony. Any person convicted under § 1108 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be sentenced to life imprisonment.

DEL. CODE ANN. tit. 11, § 1111 (2009). Possession of child pornography; class F felony

A person is guilty of possession of child pornography when:

(1) the person knowingly possesses any visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) the person knowingly possesses any visual depiction which has been created, adapted, modified or edited so as to appear that a child is engaging in a prohibited sexual act or in the simulation of such an act.

Possession of child pornography is a class F felony.

DISTRICT OF COLUMBIA

D.C. CODE ANN. § 22-2201 (2009). Certain obscene activities and conduct declared unlawful; definitions; penalties; affirmative defenses; exception [Formerly § 22-2001]

(a) (1) It shall be unlawful in the District of Columbia for a person knowingly:

(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute,

or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(B) To present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;

(C) To pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(D) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;

(E) To create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;

(F) To advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or

(G) To advertise or otherwise promote the sale of material represented or held out by such person to be obscene.

(2) (A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than 3 copies, of obscene, indecent, or filthy material shall be prima facie evidence of an intent to disseminate such material in violation of this subsection.

(B) For purposes of paragraph (1) of this subsection, the term "knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.

(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1) of this subsection, which were named in the charge against such person and which were found in the possession or under the control of such person at the time of such person's arrest.

(b) (1) It shall be unlawful in the District of Columbia for any person knowingly:

(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute,

or provide to a minor:

(i) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(ii) Any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(B) To exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) For purposes of paragraph (1) of this subsection:

(A) The term "minor" means any person under the age of 17 years.

(B) The term "nudity" includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(C) The term "sexual conduct" includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

(D) The term "sexual excitement" includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(E) The term "sado-masochistic abuse" includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(F) The term "knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of:

(i) The character and content of any material described in paragraph (1) of this

subsection which is reasonably susceptible of examination by the defendant; and

(ii) The age of the minor.

(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934 (47 U.S.C.S. § 151 et seq.) while engaged in activities regulated pursuant to such Act.

(e) A person convicted of violating subsection (a) or (b) of this section shall for the 1st offense be fined not more than \$ 1,000 or imprisoned not more than 180 days, or both. A person convicted of a 2nd or subsequent offense under subsection (a) or (b) of this section shall be fined not less than \$ 1,000 nor more than \$ 5,000 or imprisoned not less than 6 months or more than 3 years, or both.

FLORIDA

FLA. STAT. ANN. § 827.071 (2009). Sexual performance by a child; penalties

(1) As used in this section, the following definitions shall apply:

(a) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(c) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

(d) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(e) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(f) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(g) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(h) "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(i) "Simulated" means the explicit depiction of conduct set forth in paragraph (g) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Prosecution of any person for an offense under this section shall not prohibit

prosecution of that person in this state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

FLA. STAT. ANN. § 847.011 (2009). Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty

(1) (a) Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The knowing possession by any person of three or more identical or similar materials, matters, articles, or things coming within the provisions of paragraph (a) is prima facie evidence of the violation of the paragraph.

(c) A person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for one or more violations of paragraph (a) or subsection (2).

(2) Except as provided in paragraph (1)(c), a person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper,

card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(6) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or conduct engaged in the defendant had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, by showing facts and circumstances from which it may fairly be inferred that he or she had such knowledge, or by showing that he or she had knowledge of such facts and circumstances as would put a person of ordinary intelligence and caution on inquiry as to such contents or character.

(7) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section; and, upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer, the

same shall be held by the arresting agency. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and, after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if the claimant shows that he or she is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(8) (a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney or attorney for a municipality in the name of the state upon the relation of such state attorney or attorney for a municipality.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney or attorney for a municipality requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made; however, such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In any action brought as provided in this subsection, no bond or undertaking shall be required of the state attorney or the municipality or its attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the state attorney or the municipality or its attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this subsection, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section shall not apply to the exhibition of motion picture films permitted by s. 847.013.

GEORGIA

GA. CODE ANN. § 16-12-100 (2009). Sexual exploitation of children; reporting violation; forfeiture; penalties

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

(e)(1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense.

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f)(1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section; except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

HAWAII

HAW. REV. STAT. ANN. § 707-752 (2009). Promoting child abuse in the third degree.

(1) A person commits the offense of promoting child abuse in the third degree if, knowing or having reason to know its character and content, the person possesses:

(a) Child pornography;

(b) Any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or

(c) Any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

"Child pornography" means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(a) The pornographic production of the visual representation involves the use of a minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

"Community standards" means the standards of the State.

"Computer" shall have the same meaning as in section 708-890.

"Lascivious" means tending to incite lust, to deprave the morals with respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

"Material" means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

"Minor" means any person less than eighteen years old.

"Pornographic" shall have the same meaning as in section 712-1210.

"Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

"Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

"Visual representation" includes but is not limited to undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the third degree is a class C felony.

HAW. REV. STAT. ANN. § 707-753 (2009). Affirmative defense to promoting child abuse.

It shall be an affirmative defense to a charge of promoting child abuse in the third degree that the defendant:

(a) Possessed less than three images of child pornography; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof:

(i) Took reasonable steps to destroy each such image; or

(ii) Reported the matter to a law enforcement agency and afforded that agency access to each such image.

IDAHO

IDAHO CODE § 18-1507 (2009). Sexual exploitation of a child

(1) The legislature hereby finds and declares that the commercial sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of eighteen (18) years is incapable of giving informed consent to the use of his or her body for a commercial purpose; and that to protect children from commercial sexual exploitation it is necessary to prohibit the production for trade or commerce of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

(2) As used in this section, unless the context otherwise requires:

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(b) "Child" means a person who is less than eighteen (18) years of age.

(c) "Commercial purpose" means the intention, objective, anticipation, or expectation of monetary gain or other material consideration, compensation, remuneration, or profit.

(d) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(f) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

(g) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(h) "Sadomasochism" means:

(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(i) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(j) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(k) "Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

(3) A person commits sexual exploitation of a child if, for any commercial purpose, he knowingly:

(a) Causes, induces, or permits a child to engage in, or be used for, any explicit sexual conduct; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses, or distributes any sexually exploitative material.

(4) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

(5) The sexual exploitation of a child is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars (\$ 50,000) or by both such fine and imprisonment.

(6) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

IDAHO CODE § 18-1507A (2009). Possession of sexually exploitative material for other than a commercial purpose -- Penalty

(1) It is the policy of the legislature in enacting this section to protect children from the physical and psychological damage caused by their being used in photographic representations of sexual conduct which involves children. It is, therefore, the intent of the legislature to penalize possession of photographic representations of sexual conduct which involves children in order to protect the identity of children who are victimized by involvement in the photographic representations, and to protect children from future involvement in photographic representations of sexual conduct.

(2) Every person who knowingly and willfully has in his possession any sexually exploitative material as defined in section 18-1507, Idaho Code, for other than a commercial purpose, is guilty of a felony, and shall be punished by imprisonment in the state prison for a period not to exceed ten (10) years and by a fine not to exceed ten thousand dollars (\$ 10,000).

ILLINOIS

720 ILL. COMP. STAT. 5/11-20.1 (2009). Child pornography

Sec. 11-20.1. Child pornography. (a) A person commits the offense of child pornography who:

(1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he knows or reasonably should know to be under the age of 18 or any severely or profoundly mentally retarded person where such child or severely or profoundly mentally retarded person is:

(i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or

(ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child or severely or profoundly mentally retarded person and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child or severely or profoundly mentally retarded person and the sex organs of another person or animal; or

(iii) actually or by simulation engaged in any act of masturbation; or

(iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or

(v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or

(vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or

(vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or

(2) with the knowledge of the nature or content thereof, reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child or severely or profoundly mentally retarded person whom the person knows or reasonably should know to be under the age of 18 or to be a severely or profoundly mentally retarded person, engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(3) with knowledge of the subject matter or theme thereof, produces any stage play, live performance, film, videotape or other similar visual portrayal or depiction by computer which includes a child whom the person knows or reasonably should know to be under the age of 18 or a severely or profoundly mentally retarded person engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(4) solicits, uses, persuades, induces, entices, or coerces any child whom he knows or reasonably should know to be under the age of 18 or a severely or profoundly mentally retarded person to appear in any stage play, live presentation, film, videotape, photograph or other similar visual reproduction or depiction by computer in which the child or severely or profoundly mentally retarded person is or will be depicted, actually or by simulation, in any act, pose or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(5) is a parent, step-parent, legal guardian or other person having care or custody of a child whom the person knows or reasonably should know to be under the age of 18 or a severely or profoundly mentally retarded person and who knowingly permits, induces, promotes, or arranges for such child or severely or profoundly mentally retarded person to appear in any stage play, live performance, film, videotape, photograph or other similar visual presentation, portrayal or simulation or depiction by computer of any act or activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(6) with knowledge of the nature or content thereof, possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child or severely or profoundly mentally retarded person whom the person knows or reasonably should know to be under the age of 18 or to be a severely or profoundly mentally retarded person, engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(7) solicits, uses, persuades, induces, entices, or coerces a person to provide a child under the age of 18 or a severely or profoundly mentally retarded person to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child or severely or profoundly mentally retarded person will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.

(b)(1) It shall be an affirmative defense to a charge of child pornography that the defendant reasonably believed, under all of the circumstances, that the child was 18 years of age or older or that the person was not a severely or profoundly mentally retarded person but only where, prior to the act or acts giving rise to a prosecution under this Section, he took some affirmative action or made a bonafide inquiry designed to ascertain whether the child was 18 years of age or older or that the person was not a severely or profoundly mentally retarded person and his reliance upon the information so obtained

was clearly reasonable.

(2) (Blank).

(3) The charge of child pornography shall not apply to the performance of official duties by law enforcement or prosecuting officers or persons employed by law enforcement or prosecuting agencies, court personnel or attorneys, nor to bonafide treatment or professional education programs conducted by licensed physicians, psychologists or social workers.

(4) Possession by the defendant of more than one of the same film, videotape or visual reproduction or depiction by computer in which child pornography is depicted shall raise a rebuttable presumption that the defendant possessed such materials with the intent to disseminate them.

(5) The charge of child pornography does not apply to a person who does not voluntarily possess a film, videotape, or visual reproduction or depiction by computer in which child pornography is depicted. Possession is voluntary if the defendant knowingly procures or receives a film, videotape, or visual reproduction or depiction for a sufficient time to be able to terminate his or her possession.

(6) (Effective January 1, 2010) Any violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) that includes a child engaged in, solicited for, depicted in, or posed in any act of sexual penetration or bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in a sexual context shall be deemed a crime of violence.

(c) Violation of paragraph (1), (4), (5), or (7) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 2,000 and a maximum fine of \$ 100,000. Violation of paragraph (3) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 1500 and a maximum fine of \$ 100,000. Violation of paragraph (2) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000. Violation of paragraph (6) of subsection (a) is a Class 3 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.

(d) If a person is convicted of a second or subsequent violation of this Section within 10 years of a prior conviction, the court shall order a presentence psychiatric examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

(e) Any film, videotape, photograph or other similar visual reproduction or depiction by computer which includes a child under the age of 18 or a severely or profoundly mentally retarded person engaged in any activity described in subparagraphs (i) through (vii) or paragraph 1 of subsection (a), and any material or equipment used or intended for use in photographing, filming, printing, producing, reproducing, manufacturing, projecting, exhibiting, depiction by computer, or disseminating such material shall be seized and forfeited in the manner, method and procedure provided by Section 36-1 of this Code

[720 ILCS 5/36-1] for the seizure and forfeiture of vessels, vehicles and aircraft.

(e-5) Upon the conclusion of a case brought under this Section, the court shall seal all evidence depicting a victim or witness that is sexually explicit. The evidence may be unsealed and viewed, on a motion of the party seeking to unseal and view the evidence, only for good cause shown and in the discretion of the court. The motion must expressly set forth the purpose for viewing the material. The State's attorney and the victim, if possible, shall be provided reasonable notice of the hearing on the motion to unseal the evidence. Any person entitled to notice of a hearing under this subsection (e-5) may object to the motion.

(f) Definitions. For the purposes of this Section:

(1) "Disseminate" means (i) to sell, distribute, exchange or transfer possession, whether with or without consideration or (ii) to make a depiction by computer available for distribution or downloading through the facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.

(2) "Produce" means to direct, promote, advertise, publish, manufacture, issue, present or show.

(3) "Reproduce" means to make a duplication or copy.

(4) "Depict by computer" means to generate or create, or cause to be created or generated, a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

(5) "Depiction by computer" means a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

(6) "Computer", "computer program", and "data" have the meanings ascribed to them in Section 16D-2 of this Code [720 ILCS 5/16D-2].

(7) "Child" includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is, or appears to be, that of a person, either in part, or in total, under the age of 18, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such. "Child" also includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is of a person under the age of 18.

(8) "Sexual penetration" and "sexual conduct" have the meanings ascribed to them in Section 12-12 of this Code [720 ILCS 5/12-12].

(g) Re-enactment; findings; purposes.

(1) The General Assembly finds and declares that:

(i) Section 50-5 of Public Act 88-680, effective January 1, 1995, contained provisions amending the child pornography statute, Section 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-20.1]. Section 50-5 also contained other provisions [720 ILCS 5/50-5].

(ii) In addition, Public Act 88-680 was entitled "AN ACT to create a Safe Neighborhoods Law". (A) Article 5 was entitled JUVENILE JUSTICE and amended the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.]. (B) Article 15 was entitled GANGS and amended various provisions of the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] and the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.]. (C) Article 20 was entitled ALCOHOL ABUSE and amended various provisions of the Illinois Vehicle Code [625 ILCS 5/1-100 et seq.]. (D) Article 25 was entitled DRUG ABUSE and amended the Cannabis Control Act [720 ILCS 550/1 et seq.] and the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.]. (E) Article 30 was entitled FIREARMS and amended the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] and the Code of Criminal Procedure of 1963 [725 ILCS 5/100-1 et seq.]. (F) Article 35 amended the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.], the Rights of Crime Victims and Witnesses Act [725 ILCS 120/1 et seq.], and the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.]. (G) Article 40 amended the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] to increase the penalty for compelling organization membership of persons. (H) Article 45 created the Secure Residential Youth Care Facility Licensing Act [730 ILCS 175/45-1 et seq.] and amended the State Finance Act [30 ILCS 105/1 et seq.], the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.], the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.], and the Private Correctional Facility Moratorium Act [730 ILCS 140/1 et seq.]. (I) Article 50 amended the WIC Vendor Management Act [410 ILCS 255/1 et seq.], the Firearm Owners Identification Card Act [430 ILCS 65/0.01 et seq.], the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.], the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.], the Wrongs to Children Act [720 ILCS 150/0.01 et seq.], and the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.].

(iii) On September 22, 1998, the Third District Appellate Court in *People v. Dainty*, 701 N.E. 2d 118, ruled that Public Act 88-680 violates the single subject clause of the Illinois Constitution (Article IV, Section 8 (d)) and was unconstitutional in its entirety. As of the time this amendatory Act of 1999 [P.A. 91-54] was prepared, *People v. Dainty* was still subject to appeal.

(iv) Child pornography is a vital concern to the people of this State and the validity of future prosecutions under the child pornography statute of the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] is in grave doubt.

(2) It is the purpose of this amendatory Act of 1999 [P.A. 91-54] to prevent or minimize any problems relating to prosecutions for child pornography that may result from challenges to the constitutional validity of Public Act 88-680 by re-enacting the Section relating to child pornography that was included in Public Act 88-680.

(3) This amendatory Act of 1999 [P.A. 91-54] re-enacts Section 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-20.1], as it has been amended. This re-enactment is intended to remove any question as to the validity or content of that Section; it is not intended to supersede any other Public Act that amends the text of the Section as set forth in this amendatory Act of 1999 [P.A. 91-54]. The material is shown as existing text (i.e., without underscoring) because, as of the time this amendatory Act of 1999 [P.A. 91-54] was prepared, *People v. Dainty* was subject to appeal to the Illinois Supreme Court.

(4) The re-enactment by this amendatory Act of 1999 [P.A. 91-54] of Section 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-20.1] relating to child pornography that was amended by Public Act 88-680 is not intended, and shall not be construed, to imply that Public Act 88-680 is invalid or to limit or impair any legal argument concerning whether those provisions were substantially re-enacted by other Public Acts.

720 ILL. COMP. STAT. ANN. 5/11-20.3 (2009). Aggravated child pornography

Sec. 11-20.3. Aggravated child pornography. (a) A person commits the offense of aggravated child pornography who:

(1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he or she knows or reasonably should know to be under the age of 13 years where such child is:

(i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or

(ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child and the sex organs of another person or animal; or

(iii) actually or by simulation engaged in any act of masturbation; or

(iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or

(v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or

(vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or

(vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or

(2) with the knowledge of the nature or content thereof, reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(3) with knowledge of the subject matter or theme thereof, produces any stage play, live performance, film, videotape or other similar visual portrayal or depiction by computer which includes a child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(4) solicits, uses, persuades, induces, entices, or coerces any child whom he or she knows or reasonably should know to be under the age of 13 to appear in any stage play, live presentation, film, videotape, photograph or other similar visual reproduction or depiction by computer in which the child or severely or profoundly mentally retarded person is or will be depicted, actually or by simulation, in any act, pose or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(5) is a parent, step-parent, legal guardian or other person having care or custody of a child whom the person knows or reasonably should know to be under the age of 13 and who knowingly permits, induces, promotes, or arranges for such child to appear in any stage play, live performance, film, videotape, photograph or other similar visual presentation, portrayal or simulation or depiction by computer of any act or activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(6) with knowledge of the nature or content thereof, possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(7) solicits, or knowingly uses, persuades, induces, entices, or coerces a person to provide a child under the age of 13 to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.

(b)(1) It shall be an affirmative defense to a charge of aggravated child pornography that the defendant reasonably believed, under all of the circumstances, that the child was 13

years of age or older, but only where, prior to the act or acts giving rise to a prosecution under this Section, he or she took some affirmative action or made a bonafide inquiry designed to ascertain whether the child was 13 years of age or older and his or her reliance upon the information so obtained was clearly reasonable.

(2) The charge of aggravated child pornography shall not apply to the performance of official duties by law enforcement or prosecuting officers or persons employed by law enforcement or prosecuting agencies, court personnel or attorneys, nor to bonafide treatment or professional education programs conducted by licensed physicians, psychologists or social workers.

(3) If the defendant possessed more than 3 of the same film, videotape or visual reproduction or depiction by computer in which aggravated child pornography is depicted, then the trier of fact may infer that the defendant possessed such materials with the intent to disseminate them.

(4) The charge of aggravated child pornography does not apply to a person who does not voluntarily possess a film, videotape, or visual reproduction or depiction by computer in which aggravated child pornography is depicted. Possession is voluntary if the defendant knowingly procures or receives a film, videotape, or visual reproduction or depiction for a sufficient time to be able to terminate his or her possession.

(c) Sentence: (1) A person who commits a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) is guilty of a Class X felony with a mandatory minimum fine of \$ 2,000 and a maximum fine of \$ 100,000.

(2) A person who commits a violation of paragraph (6) of subsection (a) is guilty of a Class 2 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.

(3) A person who commits a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 9 years with a mandatory minimum fine of \$ 2,000 and a maximum fine of \$ 100,000.

(4) A person who commits a violation of paragraph (6) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent

liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class 1 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.

(d) If a person is convicted of a second or subsequent violation of this Section within 10 years of a prior conviction, the court shall order a presentence psychiatric examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

(e) Any film, videotape, photograph or other similar visual reproduction or depiction by computer which includes a child under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of subsection (a), and any material or equipment used or intended for use in photographing, filming, printing, producing, reproducing, manufacturing, projecting, exhibiting, depiction by computer, or disseminating such material shall be seized and forfeited in the manner, method and procedure provided by Section 36-1 of this Code [720 ILCS 5/36-1] for the seizure and forfeiture of vessels, vehicles and aircraft.

(e-5) Upon the conclusion of a case brought under this Section, the court shall seal all evidence depicting a victim or witness that is sexually explicit. The evidence may be unsealed and viewed, on a motion of the party seeking to unseal and view the evidence, only for good cause shown and in the discretion of the court. The motion must expressly set forth the purpose for viewing the material. The State's attorney and the victim, if possible, shall be provided reasonable notice of the hearing on the motion to unseal the evidence. Any person entitled to notice of a hearing under this subsection (e-5) may object to the motion.

(f) Definitions. For the purposes of this Section:

(1) "Disseminate" means (i) to sell, distribute, exchange or transfer possession, whether with or without consideration or (ii) to make a depiction by computer available for distribution or downloading through the facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.

(2) "Produce" means to direct, promote, advertise, publish, manufacture, issue, present or show.

(3) "Reproduce" means to make a duplication or copy.

(4) "Depict by computer" means to generate or create, or cause to be created or generated, a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

(5) "Depiction by computer" means a computer program or data that, after being

processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

(6) "Computer", "computer program", and "data" have the meanings ascribed to them in Section 16D-2 of this Code [720 ILCS 5/16D-2].

(7) For the purposes of this Section, "child" means a person, either in part or in total, under the age of 13, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such.

(8) "Sexual penetration" and "sexual conduct" have the meanings ascribed to them in Section 12-12 of this Code [720 ILCS 5/12-12].

(g) When a charge of aggravated child pornography is brought, the age of the child is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the age in question. The trier of fact can rely on its own everyday observations and common experiences in making this determination.

INDIANA

IND. CODE ANN. § 35-42-4-4 (2009). Child exploitation.

(a) As used in this section:

"Disseminate" means to transfer possession for free or for a consideration.

"Matter" has the same meaning as in IC 35-49-1-3.

"Performance" has the same meaning as in IC 35-49-1-7.

"Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts

or describes sexual conduct by a child under eighteen (18) years of age; or

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

- (1) a picture;
- (2) a drawing;
- (3) a photograph;
- (4) a negative image;
- (5) undeveloped film;
- (6) a motion picture;
- (7) a videotape;
- (8) a digitized image; or
- (9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

IOWA

IOWA CODE § 728.12 (2008). Sexual exploitation of a minor.

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a

prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system. A person who commits a violation of this subsection commits a class "C" felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class "D" felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. It shall be unlawful to knowingly purchase or possess a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or an electronic, magnetic, or optical storage system, or any other type of storage system which depicts a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person's having been convicted under this subsection, any of the following apply:

- a. The person has a prior conviction or deferred judgment under this subsection.
- b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

4. This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

KANSAS

KAN. STAT. ANN. § 21-3516 (2008). Sexual exploitation of a child.

(a) Sexual exploitation of a child is:

(1) Except as provided in subsection (a)(5), employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct for the purpose of promoting any performance;

(2) possessing any visual depiction, including any photograph, film, video picture, digital or computer generated image or picture, whether made or produced by electronic, mechanical or other means, where such visual depiction of a child under 18 years of age is shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2);

(4) except as provided in subsection (a)(6), promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance;

(5) employing, using, persuading, inducing, enticing or coercing a child under 14 years of age to engage in sexually explicit conduct for the purpose of promoting any performance; or

(6) promoting any performance that includes sexually explicit conduct by a child under 14 years of age, knowing the character and content of the performance.

(b) As used in this section:

(1) "Sexually explicit conduct" means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse for the purpose of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person.

(2) "Promoting" means procuring, selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender, the child or another.

(3) "Performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation.

(4) "Nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(c) Except as provided further, sexual exploitation of a child is a severity level 5, person felony. Sexual exploitation of a child as described in subsection (a)(5) or (a)(6) when the offender is 18 years of age or older is an off-grid person felony.

(d) This section shall be part of and supplemental to the Kansas criminal code.

KENTUCKY

KY. REV. STAT. ANN. § 531.335 (2009). Possession of matter portraying a sexual performance by a minor.

(1) A person is guilty of possession of matter portraying a sexual performance by a minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he or she knowingly has in his or her possession or control any matter which visually depicts an actual sexual performance by a minor person.

(2) Possession of matter portraying a sexual performance by a minor is a Class D felony.

KY. REV. STAT. ANN. § 531.340 (2009). Distribution of matter portraying a sexual performance by a minor.

(1) A person is guilty of distribution of matter portraying a sexual performance by a minor when, having knowledge of its content and character, he or she:

(a) Sends or causes to be sent into this state for sale or distribution; or

(b) Brings or causes to be brought into this state for sale or distribution; or

(c) In this state, he or she:

1. Exhibits for profit or gain; or

2. Distributes; or

3. Offers to distribute; or

4. Has in his or her possession with intent to distribute, exhibit for profit or gain or offer to distribute, any matter portraying a sexual performance by a minor.

(2) Any person who has in his or her possession more than one (1) unit of material coming within the provision of KRS 531.300(2) shall be rebuttably presumed to have

such material in his or her possession with the intent to distribute it.

(3) Distribution of matter portraying a sexual performance by a minor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

KY. REV. STAT. ANN. § 531.370 (2009). Using minors to distribute material portraying a sexual performance by a minor.

(1) A person is guilty of using minors to distribute material portraying a sexual performance by a minor when knowing a person to be a minor, or having possession of such facts that he should reasonably know such person is a minor, and knowing of the content and character of the material, he knowingly:

- (a) Hires; or
- (b) Employs; or
- (c) Uses,

a minor to do or assist in doing any of the acts prohibited by KRS 531.340.

(2) Using minors to distribute material portraying a sexual performance by a minor is a Class D felony unless the defendant has previously been convicted of violation of this section or KRS 531.030, in which case it shall be a Class C felony.

LOUISIANA

LA. REV. STAT. ANN. § 14:81.1 (2009). Pornography involving juveniles

A. Pornography involving juveniles is any of the following:

(1) The photographing, videotaping, filming, or otherwise reproducing visually of any sexual performance involving a child under the age of seventeen.

(2) The solicitation, promotion, or coercion of any child under the age of seventeen for the purpose of photographing, videotaping, filming, or otherwise reproducing visually any sexual performance involving a child under the age of seventeen.

(3) The intentional possession, sale, distribution, or possession with intent to sell or distribute of any photographs, films, videotapes, or other visual reproductions of any sexual performance involving a child under the age of seventeen.

(4) The consent of a parent, legal guardian, or custodian of a child under the age of seventeen for the purpose of photographing, videotaping, filming, or otherwise reproducing visually any sexual performance involving the child.

B. For purposes of this Section the following definitions shall apply:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct involving a child under the age of seventeen.

(2) "Performance" means any play, motion picture, photograph, dance, or other visual presentation.

(3) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.

(4) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, prevent, exhibit, or advertise, or to offer or agree to do the same.

C. Possession of three or more of the same photographs, films, videotapes, or other visual reproductions shall be prima facie evidence of intent to sell or distribute.

D. Lack of knowledge of the juvenile's age shall not be a defense.

E. (1) Whoever commits the crime of pornography involving juveniles shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than two years or more than ten years, without benefit of parole, probation, or suspension of sentence.

(2) Whoever commits the crime of pornography involving juveniles by violating the provisions of Paragraph (A)(2) of this Section on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(3) Upon completion of the term of imprisonment imposed in accordance with Paragraph (2) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.

(4) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

(5) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that sufficient funds are made available for such purpose whether by appropriation of state

funds or from any other source.

(6) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act, that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

F. Any evidence of pornography involving a child under the age of seventeen shall be contraband. Such contraband shall be seized in accordance with law and shall be disposed of in accordance with R.S. 46:1845.

G. In prosecutions for violations of this Section, the trier of fact may determine, utilizing the following factors, whether or not the person displayed or depicted in any photograph, videotape, film, or other video reproduction introduced in evidence was under the age of seventeen years at the time of filming or recording:

- (1) The general body growth, bone structure, and bone development of the person.
- (2) The development of pubic or body hair on the person.
- (3) The development of the person's sexual organs.
- (4) The context in which the person is placed or the age attributed to the person in any accompanying video, printed, or text material.
- (5) Available expert testimony and opinion as to the chronological age or degree of physical or mental maturity or development of the person.
- (6) Such other information, factors, and evidence available to the trier of fact which the court determines is probative and reasonably reliable.

MAINE

17-A ME. REV. STAT. § 283 (2009). Dissemination of sexually explicit material

1. A person is guilty of dissemination of sexually explicit material if:

- A. The person intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual

image or material that depicts any minor who the person knows or has reason to know is a minor engaging in sexually explicit conduct. Violation of this paragraph is a Class C crime;

B. The person violates paragraph A and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class B crime;

C. The person intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any minor who is less than 12 years of age who the person knows or has reason to know is a minor less than 12 years of age engaging in sexually explicit conduct. Violation of this paragraph is a Class B crime; or

D. The person violates paragraph C and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime.

Section 9-A governs the use of prior convictions when determining a sentence.

2. For the purposes of this section, possession of 10 or more copies of any of the materials as described in subsection 1 gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person possesses those items with intent to disseminate.

17-A ME. REV. STAT. § 284 (2009). Possession of sexually explicit material

1. A person is guilty of possession of sexually explicit material if that person:

A. Intentionally or knowingly transports, exhibits, purchases or possesses any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

- 1) The other person has not in fact attained 16 years of age; or
- 2) The person knows or has reason to know that the other person

has not attained 16 years of age.

Violation of this paragraph is a Class D crime;

B. Violates paragraph A and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class C crime;

C. Intentionally or knowingly transports, exhibits, purchases or possesses any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

- 1) The other person has not in fact attained 12 years of age; or
- 2) The person knows or has reason to know that the other person has not attained 12 years of age.

Violation of this paragraph is a Class C crime; or

D. Violates paragraph C and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class B crime.

Section 9-A governs the use of prior convictions when determining a sentence.

2. It is a defense to a prosecution under this section that the person depicted was the spouse of the person possessing the sexually explicit material at the time the material was produced.

3. The age of the person depicted and that the person depicted is an actual person may be reasonably inferred from the depiction. Competent medical evidence or other expert testimony may be used to establish the age and authenticity of the person depicted.

4. Any material that depicts a person who has not attained 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.

MARYLAND

MD. CODE ANN., CRIM. LAW § 11-207 (2009). Child pornography

(a) Prohibited. -- A person may not:

(1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;

(2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;

(3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;

(4) knowingly promote, distribute, or possess with the intent to distribute any matter, visual representation, or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or

(5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

(b) Penalty. -- A person who violates this section is guilty of a felony and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding 10 years or a fine not exceeding \$ 25,000 or both; and

(2) for each subsequent violation, imprisonment not exceeding 20 years or a fine not exceeding \$ 50,000 or both.

(c) Evidence. --

(1) (i) This paragraph applies only if the minor's identity is unknown or the minor is outside the jurisdiction of the State.

(ii) In an action brought under this section, the State is not required to identify or produce testimony from the minor who is depicted in the obscene matter or in any visual representation or performance that depicts the minor engaged as a subject in sadomasochistic abuse or sexual conduct.

(2) The trier of fact may determine whether an individual who is depicted in an obscene

matter, or any visual representation or performance as the subject in sadomasochistic abuse or sexual conduct, was a minor by:

(i) observation of the matter depicting the individual;

(ii) oral testimony by a witness to the production of the matter, representation, or performance;

(iii) expert medical testimony; or

(iv) any other method authorized by an applicable provision of law or rule of evidence.

MD. CODE ANN., CRIM. LAW § 11-208 (2009). Possession of visual representation of child under 16 engaged in certain sexual acts

(a) Prohibited. -- A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child under the age of 16 years:

(1) engaged as a subject of sadomasochistic abuse;

(2) engaged in sexual conduct; or

(3) in a state of sexual excitement.

(b) Penalty. --

(1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$ 2,500 or both.

(2) A person who violates this section, having previously been convicted under this section, is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$ 10,000 or both.

(c) Exemption. -- Nothing in this section may be construed to prohibit a parent from possessing visual representations of the parent's own child in the nude unless the visual representations show the child engaged:

(1) as a subject of sadomasochistic abuse; or

(2) in sexual conduct and in a state of sexual excitement.

(d) Affirmative defense. -- It is an affirmative defense to a charge of violating this section that the person promptly and in good faith:

- (1) took reasonable steps to destroy each visual representation; or
- (2) reported the matter to a law enforcement agency.

MASSACHUSETTS

MASS. ANN. LAWS ch. 272, § 29B (2009). Child Pornography; Dissemination of Material Depicting Sexual Conduct by Children.

(a) Whoever, with lascivious intent, disseminates any visual material that contains a representation or reproduction of any posture or exhibition in a state of nudity involving the use of a child who is under eighteen years of age, knowing the contents of such visual material or having sufficient facts in his possession to have knowledge of the contents thereof, or has in his possession any such visual material knowing the contents or having sufficient facts in his possession to have knowledge of the contents thereof, with the intent to disseminate the same, shall be punished in the state prison for a term of not less than ten nor more than twenty years or by a fine of not less than ten thousand nor more than fifty thousand dollars or three times the monetary value of any economic gain derived from said dissemination, whichever is greater, or by both such fine and imprisonment.

(b) Whoever with lascivious intent disseminates any visual material that contains a representation or reproduction of any act that depicts, describes, or represents sexual conduct participated or engaged in by a child who is under eighteen years of age, knowing the contents of such visual material or having sufficient facts in his possession to have knowledge of the contents thereof, or whoever has in his possession any such visual material knowing the contents or having sufficient facts in his possession to have knowledge of the contents thereof, with the intent to disseminate the same, shall be punished in the state prison for a term of not less than ten nor more than twenty years or by a fine of not less than ten thousand nor more than fifty thousand dollars or three times the monetary value of any economic gain derived from said dissemination, whichever is greater, or by both such fine and imprisonment.

(c) For the purposes of this section, the determination whether the child in any visual material prohibited hereunder is under eighteen years of age may be made by the personal testimony of such child, by the testimony of a person who produced, processed, published, printed or manufactured such visual material that the child therein was known to him to be under eighteen years of age, by testimony of a person who observed the visual material, or by expert medical testimony as to the age of the child based upon the child's physical appearance, by inspection of the visual material, or by any other method authorized by any general or special law or by any applicable rule of evidence.

(d) In a prosecution under this section, a minor shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.

(e) Pursuant to this section, proof that dissemination of any visual material that contains a representation or reproduction of sexual conduct or of any posture or exhibition in a state of nudity involving the use of a child who is under eighteen years of age was for a bona fide scientific, medical, or educational purpose for a bona fide school, museum, or library may be considered as evidence of a lack of lascivious intent.

MASS. ANN. LAWS ch. 272, § 29C (2009). Child Pornography; Purchase or Possession of Material Depicting Sexual Conduct by Children.

Whoever knowingly purchases or possesses a negative, slide, book, magazine, film, videotape, photograph or other similar visual reproduction, or depiction by computer, of any child whom the person knows or reasonably should know to be under the age of 18 years of age and such child is:

(i) actually or by simulation engaged in any act of sexual intercourse with any person or animal;

(ii) actually or by simulation engaged in any act of sexual contact involving the sex organs of the child and the mouth, anus or sex organs of the child and the sex organs of another person or animal;

(iii) actually or by simulation engaged in any act of masturbation;

(iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal;

(v) actually or by simulation engaged in any act of excretion or urination within a sexual context;

(vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or

(vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed genitals, pubic area, buttocks or, if such person is female, a fully or partially developed breast of the child; with knowledge of the nature or content thereof shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than \$1,000 nor more than \$10,000, or by both such fine and imprisonment for the first offense, not less than five years in a state prison or by a fine of not less than \$5,000 nor more than \$20,000, or by both such fine and imprisonment for the second offense, not less than 10 years in a state prison or by a fine of not less than \$10,000 nor more than \$30,000, or by both such fine and imprisonment for the third and subsequent offenses.

A prosecution commenced under this section shall not be continued without a finding nor placed on file.

The provisions of this section shall not apply to a law enforcement officer, licensed

physician, licensed psychologist, attorney or officer of the court who is in possession of such materials in the lawful performance of his official duty. Nor shall the provisions of this section apply to an employee of a bona fide enterprise, the purpose of which enterprise is to filter or otherwise restrict access to such materials, who possesses examples of computer depictions of such material for the purposes of furthering the legitimate goals of such enterprise.

MICHIGAN

MICH. COMP. LAWS SERV. § 750.145c (2009). Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited.

(1) As used in this section:

(a) "Appears to include a child" means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:

(i) It was created using a depiction of any part of an actual person under the age of 18.

(ii) It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:

(A) The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.

(B) The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(C) The depiction depicts or describes a listed sexual act in a patently offensive way.

(b) "Child" means a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.

(c) "Commercial film or photographic print processor" means a person or his or her employee who, for compensation, develops exposed photographic film into movie films, negatives, slides, or prints; makes prints from negatives or slides; or duplicates movie films or videotapes.

(d) "Computer technician" means a person who installs, maintains, troubleshoots, upgrades, or repairs computer hardware, software, personal computer networks, or peripheral equipment.

(e) "Contemporary community standards" means the customary limits of candor and decency in this state at or near the time of the alleged violation of this section.

(f) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not

include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(g) "Erotic nudity" means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this subdivision, "lascivious" means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(h) "Listed sexual act" means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(i) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(j) "Passive sexual involvement" means an act, real or simulated, that exposes another person to or draws another person's attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(k) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion.

(l) "Child sexually abusive activity" means a child engaging in a listed sexual act.

(m) "Child sexually abusive material" means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(n) "Sadomasochistic abuse" means either of the following:

(i) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(ii) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(o) "Sexual excitement" means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(p) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(2) A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance

any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

(3) A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than \$50,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to the persons described in section 7 of 1984 PA 343, MCL 752.367.

(4) A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to any of the following:

(a) A person described in section 7 of 1984 PA 343, MCL 752.367, a commercial film or photographic print processor acting pursuant to subsection (8) , or a computer technician acting pursuant to subsection (9) .

(b) A police officer acting within the scope of his or her duties as a police officer.

(c) An employee or contract agent of the department of social services acting within the scope of his or her duties as an employee or contract agent.

(d) A judicial officer or judicial employee acting within the scope of his or her duties as a judicial officer or judicial employee.

(e) A party or witness in a criminal or civil proceeding acting within the scope of that criminal or civil proceeding.

(f) A physician, psychologist, limited license psychologist, professional counselor, or registered nurse licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, acting within the scope of practice for which he or she is licensed.

(g) A social worker registered in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, acting within the scope of practice for which he or she is registered.

(5) Expert testimony as to the age of the child used in a child sexually abusive material or a child sexually abusive activity is admissible as evidence in court and may be a legitimate basis for determining age, if age is not otherwise proven.

(6) It is an affirmative defense to a prosecution under this section that the alleged child is a person who is emancipated by operation of law under section 4(2) of 1968 PA 293, MCL 722.4, as proven by a preponderance of the evidence.

(7) If a defendant in a prosecution under this section proposes to offer in his or her defense evidence to establish that a depiction that appears to include a child was not, in fact, created using a depiction of any part of an actual person under the age of 18, the defendant shall at the time of the arraignment on the information or within 15 days after arraignment but not less than 10 days before the trial of the case, or at such other time as the court directs, file and serve upon the prosecuting attorney of record a notice in writing of his or her intention to offer that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information as to the facts that establish that the depiction was not, in fact, created using a depiction of any part of an actual person under the age of 18. Failure to file a timely notice in conformance with this subsection precludes a defendant from offering this defense.

(8) If a commercial film or photographic print processor reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity or employment, of a film, photograph, movie film, videotape, negative, or slide depicting a person that the processor has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of the film, photograph, movie film, videotape, negative, or slide to a law enforcement agency having jurisdiction ; or keeps the film, photograph, movie film, videotape, negative, or slide according to the law enforcement agency's instructions, both of the following shall apply:

(a) The identity of the processor shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the processor acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(9) If a computer technician reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity or employment, of an electronic visual image, computer-generated image or picture or sound recording depicting a person that the computer technician has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of that image, picture, or sound recording to the law enforcement agency; or keeps the image, picture, or sound recording according to the law enforcement agency's instructions, both of the following shall apply:

(a) The identity of the computer technician shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the computer technician acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(10) This section applies uniformly throughout the state and all political subdivisions and municipalities in the state.

(11) A local municipality or political subdivision shall not enact ordinances, nor enforce existing ordinances, rules, or regulations governing child sexually abusive activity or child sexually abusive material as defined by this section.

MINNESOTA

MINN. STAT. § 617.247 (2008). POSSESSION OF PORNOGRAPHIC WORK INVOLVING MINORS

Subdivision 1. Policy; purpose.

It is the policy of the legislature in enacting this section to protect minors from the physical and psychological damage caused by their being used in pornographic work depicting sexual conduct which involves minors. It is therefore the intent of the legislature to penalize possession of pornographic work depicting sexual conduct which involve minors or appears to involve minors in order to protect the identity of minors who are victimized by involvement in the pornographic work, and to protect minors from future involvement in pornographic work depicting sexual conduct.

Subd. 2. Definitions.

For purposes of this section, the following terms have the meanings given them:

(a) "Pornographic work" has the meaning given to it in section 617.246.

(b) "Sexual conduct" has the meaning given to it in section 617.246.

Subd. 3. Dissemination prohibited.

(a) A person who disseminates pornographic work to an adult or a minor, knowing or with reason to know its content and character, is guilty of a felony and may be sentenced to imprisonment for not more than seven years and a fine of not more than \$10,000 for a first offense and for not more than 15 years and a fine of not more than \$20,000 for a second or subsequent offense.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than 15 years if the violation occurs when the person is a registered predatory offender under section 243.166.

Subd. 4. Possession prohibited.

(a) A person who possesses a pornographic work or a computer disk or computer or other electronic, magnetic, or optical storage system or a storage system of any other type, containing a pornographic work, knowing or with reason to know its content and character, is guilty of a felony and may be sentenced to imprisonment for not more than five years and a fine of not more than \$5,000 for a first offense and for not more than ten

years and a fine of not more than \$10,000 for a second or subsequent offense.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than ten years if the violation occurs when the person is a registered predatory offender under section 243.166.

Subd. 5. Exception.

This section does not apply to the performance of official duties by peace officers, court personnel, or attorneys, nor to licensed physicians, psychologists, or social workers or persons acting at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide treatment or professional education program.

Subd. 6. Consent.

Consent to sexual performance by a minor or the minor's parent, guardian, or custodian is not a defense to a charge of violation of this section.

Subd. 7. Second offense.

If a person is convicted of a second or subsequent violation of this section within 15 years of the prior conviction, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

Subd. 8. Affirmative defense.

It shall be an affirmative defense to a charge of violating this section that the pornographic work was produced using only persons who were 18 years or older.

Subd. 9. Conditional release term.

Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court commits a person to the custody of the commissioner of corrections for violating this section, the court shall provide that after the person has completed the sentence imposed, the commissioner shall place the person on conditional release for five years, minus the time the offender served on supervised release. If the person has previously been convicted of a violation of this section, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or 617.246, or any similar statute of the United States, this state, or any state, the commissioner shall place the person on conditional release for ten years, minus the time the offender served on supervised release. The terms of conditional release are governed by section 609.3455, subdivision 8.

MISSISSIPPI

MISS. CODE ANN. § 97-5-33 (2008). Exploitation of children; prohibitions

(1) No person shall, by any means including computer, cause, solicit or knowingly permit any child to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(2) No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually explicit conduct.

(3) No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(4) No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(5) No person shall, by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(6) No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.

(7) No person shall by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.

(8) The fact that an undercover operative or law enforcement officer posed as a child or was involved in any other manner in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(9) For purposes of determining jurisdiction, the offense is committed in this state if all or part of the conduct described in this section occurs in the State of Mississippi or if the transmission that constitutes the offense either originates in this state or is received in this state.

MISSOURI

MO. REV. STAT. § 573.025 (2009). Promoting child pornography in the first degree

1. A person commits the crime of promoting child pornography in the first degree if, knowing of its content and character, such person possesses with the intent to promote or promotes child pornography of a child less than fourteen years of age or obscene material portraying what appears to be a child less than fourteen years of age.

2. Promoting child pornography in the first degree is a class B felony unless the person knowingly promotes such material to a minor, in which case it is a class A felony. No person who pleads guilty to or is found guilty of, or is convicted of, promoting child pornography in the first degree shall be eligible for probation, parole, or conditional release for a period of three calendar years.

3. Nothing in this section shall be construed to require a provider of electronic communication services or remote computing services to monitor any user, subscriber or customer of the provider, or the content of any communication of any user, subscriber or customer of the provider.

MO. REV. STAT. § 573.035 (2009). Promoting child pornography in the second degree

1. A person commits the crime of promoting child pornography in the second degree if knowing of its content and character such person possesses with the intent to promote or promotes child pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen.

2. Promoting child pornography in the second degree is a class C felony unless the person knowingly promotes such material to a minor, in which case it is a class B felony. No person who is found guilty of, pleads guilty to, or is convicted of promoting child pornography in the second degree shall be eligible for probation.

MO. REV. STAT. § 573.037 (2009). Possession of child pornography

1. A person commits the crime of possession of child pornography if, knowing of its content and character, such person possesses any child pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen.

2. Possession of child pornography is a class C felony unless the person possesses more than twenty still images of child pornography, possesses one motion picture, film, videotape, videotape production, or other moving image of child pornography, or has pleaded guilty to or has been found guilty of an offense under this section, in which case it is a class B felony.

MONTANA

MONT. CODE ANN. § 45-5-625 (2007). Sexual abuse of children.

(1) A person commits the offense of sexual abuse of children if the person:

- (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
- (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;
- (c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;
- (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
- (e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
- (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or
- (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$ 10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$ 10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$ 10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$ 50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) "Visual medium" means:

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

NEBRASKA

NEB. REV. STAT. ANN. § 28-1463.05 (2009). Visual depiction of sexually explicit acts related to possession; violation; penalty

(1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2) (a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IIIA felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

NEVADA

NEV. REV. STAT. ANN. § 200.700 (2009). Definitions.

As used in NRS 200.700 to 200.760, inclusive, unless the context otherwise provides:

1. "Performance" means any play, film, photograph, computer-generated image, electronic representation, dance or other visual presentation.
2. "Promote" means to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.
3. "Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.
4. "Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

NEV. REV. STAT. ANN. § 200.720 (2009). Promotion of sexual performance of minor unlawful.

A person who knowingly promotes a performance of a minor:

1. Where the minor engages in or simulates, or assists others to engage in or simulate, sexual conduct; or
2. Where the minor is the subject of a sexual portrayal,

is guilty of a category A felony and shall be punished as provided in NRS 200.750.

NEV. REV. STAT. ANN. § 200.730 (2009). Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties.

A person who knowingly and willfully has in his possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in or simulating, or assisting others to engage in or simulate, sexual conduct:

1. For the first offense, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.
2. For any subsequent offense, is guilty of a category A felony and shall be punished by

imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of life with the possibility of parole, and may be further punished by a fine of not more than \$5,000.

NEW HAMPSHIRE

N.H. REV. STAT. ANN. § 649-A:3 (2009). Possession of Child Sexual Abuse Images.

I. No person shall knowingly:

(a) Buy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct; or

(b) Bring or cause to be brought into this state any visual representation of a child engaging in sexually explicit conduct.

II. An offense under this section shall be a class A felony if such person has had no previous convictions in this state or another jurisdiction for the conduct prohibited by paragraph I. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in another jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum sentence.

III. It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant:

(a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:

(1) Took reasonable steps to destroy each such visual depiction; or

(2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

N.H. REV. STAT. ANN. § 649-A:3-a (2009). Distribution of Child Sexual Abuse Images. [RSA 649-A:3-a effective January 1, 2009.]

I. No person shall:

(a) Knowingly sell, exchange, or otherwise transfer, or possess with intent to sell,

exchange, or otherwise transfer any visual representation of a child engaging in or being engaged in sexually explicit conduct;

(b) Knowingly publish, exhibit, or otherwise make available any visual representation of a child engaging in or being engaged in sexually explicit conduct.

II. (a) If such person has had no previous convictions in this state or another state for the conduct prohibited by paragraph I, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the minimum.

(b) If such person has no previous convictions in this state or another state for the conduct prohibited in paragraph I, and is convicted under subparagraph I(b) with having less than 3 images or visual representations, the defendant will be guilty of a class B felony.

III. Nothing in this chapter shall be construed to limit any law enforcement agency from possessing or displaying or otherwise make available any images as may be necessary to the performance of a valid law enforcement function.

NEW JERSEY

N.J. STAT. ANN. § 2C:24-4 (2009). Endangering welfare of children

a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S. 9:6-1, R.S. 9:6-3 and P.L. 1974, c. 119, § 1 (C. 9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.

b. (1) As used in this subsection:

"Child" means any person under 16 years of age.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Prohibited sexual act" means

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus;
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1.

"Reproduction" means, but is not limited to, computer generated images.

(2) (Deleted by amendment, P.L. 2001, c. 291).

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

(5)(a) Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

(b) Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree.

(6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 16 in any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 16. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act is under the age of 16, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 16, nor shall it be a defense that the actor believed that the child was 16 years of age or older, even if such a mistaken belief was reasonable.

NEW MEXICO

N.M. Stat. Ann. § 30-6A-3 (2009). Sexual exploitation of children.

A. It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

B. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a third degree felony.

C. It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a third degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony.

D. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates

the provisions of this subsection is guilty of a second degree felony.

E. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

F. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a third degree felony.

G. The penalties provided for in this section shall be in addition to those set out in [Section 30-9-11 NMSA](#) 1978.

NEW YORK

N.Y. PENAL LAW § 263.11 (2009). Possessing an obscene sexual performance by a child.

A person is guilty of possessing an obscene sexual performance by a child when, knowing the character and content thereof, he knowingly has in his possession or control any obscene performance which includes sexual conduct by a child less than sixteen years of age.

Possessing an obscene sexual performance by a child is a class E felony.

N.Y. PENAL LAW § 263.16 (2009). Possessing a sexual performance by a child.

A person is guilty of possessing a sexual performance by a child when, knowing the character and content thereof, he knowingly has in his possession or control any performance which includes sexual conduct by a child less than sixteen years of age.

Possessing a sexual performance by a child is a class E felony.

NORTH CAROLINA

N.C. GEN. STAT. § 14-190.17A (2009). Third degree sexual exploitation of a minor

(a) Offense. -- A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.

(b) Inference. -- In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age. -- Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing. -- Violation of this section is a Class H felony.

NORTH DAKOTA

N.D. CENT. CODE § 12.1-27.2-04.1 (2009). Possession of certain materials prohibited.

A person is guilty of a class C felony if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

OHIO

OHIO REV. CODE ANN. § 2907.321 (2009). Pandering obscenity involving a minor

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display,

exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 [2907.32.2] or 2907.323 [2907.32.3] of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree.

OHIO REV. CODE ANN. § 2907.322 (2009). Pandering sexually oriented matter involving a minor

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;*

(5) Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(6) Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering sexually oriented matter involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 [2907.32.1] or 2907.323 [2907.32.3] of the Revised Code, pandering sexually oriented matter involving a minor in violation of division (A)(5) of this section is a felony of the third degree.

OHIO REV. CODE ANN. § 2907.323 (2009). Illegal use of minor in nudity-oriented material or performance

(A) No person shall do any of the following:

(1) Photograph any minor who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:

(a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) The minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(2) Consent to the photographing of the person's minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consent to the use of the person's minor child or ward in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(3) Possess or view any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless one of the following applies:

(a) The material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(b) The person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

(B) Whoever violates this section is guilty of illegal use of a minor in a nudity-oriented material or performance. Whoever violates division (A)(1) or (2) of this section is guilty of a felony of the second degree. Except as otherwise provided in this division, whoever violates division (A)(3) of this section is guilty of a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section

or section 2907.321 [2907.32.1] or 2907.322 [2907.32.2.] of the Revised Code, illegal use of a minor in a nudity-oriented material or performance in violation of division (A)(3) of this section is a felony of the fourth degree. If the offender who violates division (A)(1) or (2) of this section also is convicted of or pleads guilty to a specification as described in section 2941.1422 [2941.14.22] of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (D)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

OKLAHOMA

OKLA. STAT. ANN. tit. 21, § 1021.2 (2009). Minors--Procuring for participation in pornography

A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony and shall be punished by imprisonment for not more than twenty (20) years or by the imposition of a fine of not more than Twenty-five Thousand Dollars (\$ 25,000.00) or by both said fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

B. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

21 OKLA. STAT. § 1024.2 (2009). Purchase, Procurement, or Possession of Child Pornography.

It shall be unlawful for any person to buy, procure or possess child pornography in violation of Sections 1024.1 through 1024.4 of this title. Such person shall, upon conviction, be guilty of a felony and shall be imprisoned for a period of not more than five (5) years or a fine up to, but not exceeding, Five Thousand Dollars (\$ 5,000.00) or by both such fine and imprisonment.

21 OKLA. STAT. § 1040.12a (2009). Aggravated possession of child pornography--Penalties--Definitions

A. Any person who, with knowledge of its contents, possesses one hundred (100) or more

separate materials depicting child pornography shall be, upon conviction, guilty of aggravated possession of child pornography. The violator shall be punished by imprisonment in the custody of the Department of Corrections for a term not exceeding twenty (20) years and by a fine in an amount not more than Ten Thousand Dollars (\$ 10,000.00).

B. For purposes of this section:

1. Multiple copies of the same identical material shall each be counted as a separate item;

2. The term "material" means the same definition provided by Section 1040.75 of Title 21 of the Oklahoma Statutes and, in addition, includes all digital and computerized images and depictions; and

3. The term "child pornography" means the same definition provided by Section 1040.80 of Title 21 of the Oklahoma Statutes and, in addition, includes sexual conduct, sexual excitement, sadomasochistic abuse, and performance of material harmful to minors where a minor is present or depicted as such terms are defined in Section 1040.75 of Title 21 of the Oklahoma Statutes.

OREGON

OR. REV. STAT. § 163.684 (2007). Encouraging child sexual abuse in the first degree.

(1) A person commits the crime of encouraging child sexual abuse in the first degree if the person:

(a)(A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child or possesses such matter with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or

(B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child; and

(b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.(2) Encouraging child sexual abuse in the first degree is a Class B felony.

OR. REV. STAT. § 163.686 (2007). Encouraging child sexual abuse in the second degree.

(1) A person commits the crime of encouraging child sexual abuse in the second degree if the person:

(a)(A)(i) Knowingly possesses or controls any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; or

(ii) Knowingly pays, exchanges or gives anything of value to obtain or view a photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and

(B) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse; or

(b)(A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and

(B) Knows or is aware of and consciously disregards the fact that the conduct constitutes child abuse.

(2) Encouraging child sexual abuse in the second degree is a Class C felony.

OR. REV. STAT. § 163.687 (2007). Encouraging child sexual abuse in the third degree.

(1) A person commits the crime of encouraging child sexual abuse in the third degree if the person:

(a)(A)(i) Knowingly possesses or controls any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; or

(ii) Knowingly pays, exchanges or gives anything of value to obtain or view a photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and

(B) Knows or fails to be aware of a substantial and unjustifiable risk that the creation of the visual recording of sexually explicit conduct involved child abuse; or

(b)(A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and (B) Knows or fails to

be aware of a substantial and unjustifiable risk that the conduct constitutes child abuse.

(2) Encouraging child sexual abuse in the third degree is a Class A misdemeanor.

OR. REV. STAT. § 163.688 (2007). Possession of materials depicting sexually explicit conduct of a child in the first degree.

(1) A person commits the crime of possession of materials depicting sexually explicit conduct of a child in the first degree if the person:

(a) Knowingly possesses any visual depiction of sexually explicit conduct involving a child or any visual depiction of sexually explicit conduct that appears to involve a child; and

(b) Uses the visual depiction to induce a child to participate or engage in sexually explicit conduct.

(2) Possession of materials depicting sexually explicit conduct of a child in the first degree is a Class B felony.

OR. REV. STAT. § 163.689 (2007). Possession of materials depicting sexually explicit conduct of a child in the third degree.

(1) A person commits the crime of possession of materials depicting sexually explicit conduct of a child in the second degree if the person:

(a) Knowingly possesses any visual depiction of sexually explicit conduct involving a child or any visual depiction of sexually explicit conduct that appears to involve a child; and

(b) Intends to use the visual depiction to induce a child to participate or engage in sexually explicit conduct.

(2) Possession of materials depicting sexually explicit conduct of a child in the second degree is a Class C felony.

PENNSYLVANIA

18 PA. CONS. STAT. ANN. § 6312 (2009).

The text of this Section is effective September 14, 2009.

(a) Deleted by 2009, July 14, P.L. ____, No. 15, 1, effective in 60 days [Sept. 14, 2009].

(b) Photographing, videotaping, depicting on computer or filming sexual acts.--Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed. Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.

(c) Dissemination of photographs, videotapes, computer depictions and films.

--(1) Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(d) Child pornography.

(1) Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(e) Evidence of age.--In the event a person involved in a prohibited sexual act is alleged to be a child under the age of 18 years, competent expert testimony shall be sufficient to establish the age of said person.

(e.1) Mistake as to age.--Under subsection (b) only, it is no defense that the defendant did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that the person is over the specified age shall be a defense.

(f) Exceptions.--This section does not apply to any material that is viewed, possessed, controlled, brought or caused to be brought into this Commonwealth, or presented for a bona fide educational, scientific, governmental or judicial purpose.

(g) Definitions.--As used in this section, the following words and phrases shall have the

meanings given to them in this subsection:

"Intentionally views." The deliberate, purposeful, voluntary viewing of material depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of such act. The term shall not include the accidental or inadvertent viewing of such material.

"Prohibited sexual act." Sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

18 PA. CONS. STAT. ANN. § 6312 (2009). Sexual abuse of children

The text of this Section is effective until September 14, 2009.

(a) DEFINITION.-- As used in this section, "prohibited sexual act" means sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

(b) PHOTOGRAPHING, VIDEOTAPING, DEPICTING ON COMPUTER OR FILMING SEXUAL ACTS.-- Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed. Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.

(c) DISSEMINATION OF PHOTOGRAPHS, VIDEOTAPES, COMPUTER DEPICTIONS AND FILMS.--

(1) Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(d) POSSESSION OF CHILD PORNOGRAPHY.--

(1) Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(e) EVIDENCE OF AGE.-- In the event a person involved in a prohibited sexual act is alleged to be a child under the age of 18 years, competent expert testimony shall be sufficient to establish the age of said person.

(E.1) MISTAKE AS TO AGE.-- Under subsection (b) only, it is no defense that the defendant did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that the person is over the specified age shall be a defense.

(f) EXCEPTIONS.-- This section does not apply to any material that is possessed, controlled, brought or caused to be brought into this Commonwealth, or presented for a bona fide educational, scientific, governmental or judicial purpose.

RHODE ISLAND

R.I. GEN. LAWS § 11-9-1.3 (2009). Child pornography prohibited

(a) Violations. It is a violation of this section for any person to:

(1) Knowingly produce any child pornography;

(2) Knowingly mail, transport, deliver or transfer by any means, including by computer, any child pornography;

(3) Knowingly reproduce any child pornography by any means, including the computer; or

(4) Knowingly possess any book, magazine, periodical, film, videotape, computer disk, computer file or any other material that contains an image of child pornography.

(b) Penalties.

(1) Whoever violates or attempts or conspires to violate subdivisions (a)(1), (a)(2) or (a)(3) of this section shall be subject to a fine of not more than five thousand dollars (\$ 5,000), or imprisoned for not more than fifteen (15) years, or both.

(2) Whoever violates or attempts or conspires to violate subdivision (a)(4) of this section shall be subject to a fine of not more than five thousand dollars (\$ 5,000), or imprisoned not more than five (5) years, or both.

(c) Definitions. For purposes of this section:

(1) "Child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

(i) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(ii) Such visual depiction is a digital image, computer image, or computer-generated image of a minor engaging in sexually explicit conduct; or

(iii) Such visual depiction has been created, adapted, or modified to display an identifiable minor engaging in sexually explicit conduct.

(2) "Computer" has the meaning given to that term in section 11-52-1;

(3) "Minor" means any person not having reached eighteen (18) years of age;

(4) "Identifiable minor."

(i) Means a person:

(A) (I) Who was a minor at the time the visual depiction was created, adapted, or modified; or

(II) Whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) Shall not be construed to require proof of the actual identity of the identifiable minor.

(5) "Producing" means producing, directing, manufacturing, issuing, publishing or advertising;

(6) "Sexually explicit conduct" means actual:

(i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, or lascivious sexual intercourse where the genitals, or pubic area of any person is exhibited;

(ii) Bestiality;

(iii) Masturbation;

(iv) Sadistic or masochistic abuse; or

(v) Graphic or lascivious exhibition of the genitals or pubic area of any person;

(7) "Visual depiction" includes undeveloped film and videotape and data stored on a computer disk or by electronic means, which is capable of conversion into a visual image;

(8) "Graphic," when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

(d) Affirmative defenses.

(1) It shall be an affirmative defense to a charge of violating subdivision (a)(1), (a)(2), or (a)(3) of this section that:

(i) The alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

(ii) Each such person was an adult at the time the material was produced; and

(iii) The defendant did not advertise, promote, present, describe or distribute the material in such a manner as to convey the impression that it is or contains a visual depiction of a minor engaging in sexually explicit conduct.

(2) It shall be an affirmative defense to a charge of violating subdivision (a)(4) of this section that the defendant:

(i) Possessed less than three (3) images of child pornography; and

(ii) Promptly and in good faith and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy of it:

(A) Took reasonable steps to destroy each such image; or

(B) Reported the matter to a law enforcement agency and afforded that agency

access to each such image.

(e) Severability. If any provision or provisions of this section, or the application of this section to any person or circumstance is held invalid by a court of competent authority, that invalidity does not affect other provisions or applications of this section which can be given effect without that invalid provision or provisions or application of the provision or provisions, and to this end the provisions of this section are declared to be separable and severable.

SOUTH CAROLINA

S.C. CODE ANN. § 16-15-410 (2008). Third degree sexual exploitation of a minor defined; penalties; exception.

(A) An individual commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.

(B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity depicted as a minor through its title, text, visual representation, or otherwise is a minor.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years.

(D) This section does not apply to an employee of a law enforcement agency, including the State Law Enforcement Division, a prosecuting agency, including the South Carolina Attorney General's Office, or the South Carolina Department of Corrections who, while acting within the employee's official capacity in the course of an investigation or criminal proceeding, is in possession of material that contains a visual representation of a minor engaging in sexual activity.

SOUTH DAKOTA

S.D. CODIFIED LAWS § 22-24A-3 (2009). Possession, Manufacture, or Distribution of Child Pornography – Consent or Mistake not a Defense – Penalty

A person is guilty of possessing, manufacturing, or distributing child pornography if the person:

(1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the

simulation of such an act;

(2) Causes or knowingly permits the creation of any visual depiction of a minor engaged in a prohibited sexual act, or in the simulation of such an act; or

(3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 4 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 3 felony.

The court shall order an assessment pursuant to [§ 22-22-1.3](#) of any person convicted of violating this section.

TENNESSEE

TENN. CODE ANN. § 39-17-1003 (2009). Offense of sexual exploitation of a minor.

(a) It is unlawful for any person to knowingly possess material that includes a minor engaged in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person possessing material that violates subsection (a) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials possessed is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subsection (d).

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly possessed the material, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class D felony; however, if the number of individual images, materials, or combination of images and materials, that are possessed is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials, or combination of images and materials, exceeds one hundred (100), the offense shall be a Class B felony.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

TENN. CODE ANN. § 39-17-1004 (2009). Offense of aggravated sexual exploitation of a minor.

(a) (1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(b) (1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901(10), or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (b)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (b)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (b)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials, that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(c) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange material within this state.

TEXAS

TEX. PENAL CODE § 43.26 (2009). Possession or Promotion of Child Pornography.

(a) A person commits an offense if:

(1) the person knowingly or intentionally possesses visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct; and

(2) the person knows that the material depicts the child as described by Subdivision (1).

(b) In this section:

(1) "Promote" has the meaning assigned by Section 43.25.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(3) "Visual material" means:

(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

(c) The affirmative defenses provided by Section 43.25(f) also apply to a prosecution under this section.

(d) An offense under Subsection (a) is a felony of the third degree.

(e) A person commits an offense if:

(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and

(2) the person knows that the material depicts the child as described by Subsection (a)(1).

(f) A person who possesses visual material that contains six or more identical visual depictions of a child as described by Subsection (a)(1) is presumed to possess the material with the intent to promote the material.

(g) An offense under Subsection (e) is a felony of the second degree.

UTAH

UTAH CODE ANN. § 76-5a-3 (2009). Sexual exploitation of a minor -- Offenses

(1) A person is guilty of sexual exploitation of a minor:

(a) when the person:

(i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or

(ii) intentionally distributes or views child pornography; or

(b) if the person is a minor's parent or legal guardian and knowingly consents to or permits that minor to be sexually exploited under Subsection (1)(a).

(2) Sexual exploitation of a minor is a felony of the second degree.

(3) It is a separate offense under this section:

(a) for each minor depicted, and if more than one minor is depicted in the child pornography in violation of this section, the depiction of each individual minor in the child pornography is a separate offense; and

(b) each time the same minor is depicted in different child pornography.

(4) It is an affirmative defense to a charge of violating this section that no person under 18 years of age was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

(5) This section may not be construed to impose criminal or civil liability on:

(a) any entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under any federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child pornography on any tangible or intangible property, or of detecting and reporting the presence of child pornography on the property; or

(b) any law enforcement officer acting within the scope of a criminal investigation.

UTAH CODE ANN. § 76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for Internet service providers and hosting companies

(1) A person is guilty of dealing in material harmful to minors when, knowing or believing that a person is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:

(a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or a

person the actor believes to be a minor, any material harmful to minors;

(b) produces, performs, or directs any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors; or

(c) participates in any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors.

(2) (a) Each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$ 1,000, plus \$ 10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

(b) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

(c) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.

(d) Subsection (2)(a) supersedes [Section 77-18-1](#).

(3) (a) If a defendant 18 years of age or older has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a second degree felony punishable by:

(i) a minimum mandatory fine of not less than \$ 5,000, plus \$ 10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than one year.

(b) If a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.

(c) Subsection (3)(a) supersedes [Section 77-18-1](#).

(d) (i) This section does not apply to an Internet service provider, as defined in [Section 76-10-1230](#), a provider of an electronic communications service as defined in [18 U.S.C. Sec. 2510](#), a telecommunications service, information service, or mobile service as defined in [47 U.S.C. Sec. 153](#), including a commercial mobile service as defined in [47 U.S.C. Sec. 332\(d\)](#), or a cable operator as defined in [47 U.S.C. Sec. 522](#), if:

(A) the distribution of pornographic material by the Internet service provider occurs

only incidentally through the provider's function of:

(I) transmitting or routing data from one person to another person; or

(II) providing a connection between one person and another person;

(B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and

(C) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.

(ii) This section does not apply to a hosting company, as defined in [Section 76-10-1230](#), if:

(A) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.

(4) A service provider, as defined in [Section 76-10-1230](#), is not negligent under this section if it complies with [Section 76-10-1231](#).

(5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).

VERMONT

VT. STAT. ANN. TIT. 13, § 2827 (2009). Possession of Child Pornography.

(a) No person shall, with knowledge of the character and content, possess any photograph, film or visual depiction, including any depiction which is stored electronically, of sexual conduct by a child or of a clearly lewd exhibition of a child's

genitals or anus.

(b) This section does not apply:

(1) if the depiction was possessed for a bona fide medical, psychological, social work, legislative, judicial or law enforcement purpose, by a physician, psychologist, social worker, legislator, judge, prosecutor, law enforcement officer, or other person having such a bona fide interest in the subject matter;

(2) if the person was a bona fide school, museum or public library, or was a person acting in the course of employment as an employee or official of such an organization or of a retail outlet affiliated with and serving the educational or intended purpose of that school, museum or library;

(3) to paintings, drawings, or nonvisual or written descriptions of sexual conduct.

(c) In any prosecution arising under this section, the defendant may raise any of the following affirmative defenses, which shall be proven by a preponderance of the evidence:

(1) that the defendant in good faith had a reasonable basis to conclude that the child in fact had attained the age of 16 when the depiction was made;

(2) that the defendant in good faith took reasonable steps, whether successful or not, to destroy or eliminate the depiction.

VIRGINIA

VA. CODE ANN. § 18.2-374.1:1 (2009). Possession, reproduction, distribution, and facilitation of child pornography; penalty.

A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5 felony.

C. Any person who reproduces by any means, including by computer, sells, gives away, distributes, electronically transmits, displays with lascivious intent, purchases, or possesses with intent to sell, give away, distribute, transmit, or display child pornography with lascivious intent shall be punished by not less than five years nor more than 20 years in a state correctional facility. Any person who commits a second or subsequent violation under this subsection shall be punished by a term of imprisonment of not less than five years nor more than 20 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment.

D. Any person who intentionally operates an Internet website for the purpose of facilitating the payment for access to child pornography is guilty of a Class 4 felony.

E. All child pornography shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

F. For purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

G. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed in violation of this section.

H. The provisions of this section shall not apply to any such material that is possessed for a bona fide medical, scientific, governmental, or judicial purpose by a physician, psychologist, scientist, attorney, or judge who possesses such material in the course of conducting his professional duties as such.

WASHINGTON

WASH. REV. CODE ANN. § 9.68A.050 (2009). Dealing in depictions of minor engaged in sexually explicit conduct

A person who:

(1) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or

(2) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct is guilty of a class C felony punishable under chapter 9A.20 RCW.

WASH. REV. CODE ANN. § 9.68A.070 (2009). Possession of minor engaged in sexually explicit conduct.

A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a class B felony.

WASH. REV. CODE ANN. § 9.68A.080 (2009). Reporting of depictions of minor engaged in sexually explicit conduct -- Civil immunity

(1) A person who, in the course of processing or producing visual or printed matter either

privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

(2) If, in the course of repairing, modifying, or maintaining a computer that has been submitted either privately or commercially for repair, modification, or maintenance, a person has reasonable cause to believe that the computer stores visual or printed matter that depicts a minor engaged in sexually explicit conduct, the person performing the repair, modification, or maintenance may report such incident, or cause a report to be made, to the proper law enforcement agency.

(3) A person who makes a report in good faith under this section is immune from civil liability resulting from the report.

WEST VIRGINIA

W. VA. CODE ANN. § 61-8C-3 (2009). Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty.

Any person who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses or displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than two years, and fined not more than two thousand dollars.

WISCONSIN

WIS. STAT. ANN. § 948.05 (2009). Sexual exploitation of a child.

(1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child may be penalized under sub. (2p):(a) Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct.(b) Records or displays in any way a child engaged in sexually explicit conduct.

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct may be penalized under sub.

(2p) if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child

engaging in the sexually explicit conduct has not attained the age of 18 years.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a) or (b) or (1m) may be penalized under sub. (2p)

(2p) (a) Except as provided in par. (b), a person who violates sub. (1), (1m), or (2) is guilty of a Class C felony. (b) A person who violates sub. (1), (1m), or (2) is guilty of a Class F felony if the person is under 18 years of age when the offense occurs.

(3) It is an affirmative defense to prosecution for violation of sub. (1) (a) or (b) or (2) if the defendant had reasonable cause to believe that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

WIS. STAT. ANN. § 948.12 (2009). Possession of child pornography.

(1m) Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances may be penalized under sub. (3): (a) The person knows that he or she possesses the material. (b) The person knows the character and content of the sexually explicit conduct in the material. (c) The person knows or reasonably should know that the child engaged in sexually explicit conduct has not attained the age of 18 years.

(2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, may be penalized under sub. (3): (a) The person knows that he or she has exhibited or played the recording. (b) Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct. (c) Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.

(3) (a) Except as provided in par. (b), a person who violates sub. (1m) or (2m) is guilty of a Class D felony. (b) A person who violates sub. (1m) or (2m) is guilty of a Class I felony if the person is under 18 years of age when the offense occurs.

WYOMING

WYO. STAT. ANN. § 6-4-303 (2009). Sexual exploitation of children; penalties; definitions.

(a) As used in this section:

(i) "Child" means a person under the age of eighteen (18) years;

(ii) "Child pornography" means any visual depiction, including any photograph, film, video, picture, computer or computer-generated image or picture, whether or not made or produced by electronic, mechanical or other means, of explicit sexual conduct, where:

(A) The production of the visual depiction involves the use of a child engaging in explicit sexual conduct;

(B) The visual depiction is of explicit sexual conduct involving a child or an individual virtually indistinguishable from a child; or

(C) The visual depiction has been created, adapted or modified to depict explicit sexual conduct involving a child or an individual virtually indistinguishable from a child.

(D) Repealed by Laws 2005, ch. 70, § 2.

(iii) "Explicit sexual conduct" means actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex, bestiality, masturbation, sadistic or masochistic abuse or lascivious exhibition of the genitals or pubic area of any person;

(iv) "Visual depiction" means developed and undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

(b) A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly:

(i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;

(ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct;

(iii) Manufactures, generates, creates, receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography;

(iv) Possesses child pornography, except that this paragraph shall not apply to:

(A) Peace officers, court personnel or district attorneys engaged in the lawful performance of their official duties;

(B) Physicians, psychologists, therapists or social workers, provided such persons are duly licensed in Wyoming and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site; or

(C) Counsel for a person charged under this section.

(c) The sexual exploitation of a child pursuant to paragraphs (b)(i) through (iii) of this section is a felony punishable by imprisonment for not less than five (5) years nor more than twelve (12) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(d) The sexual exploitation of a child by possession of sexually exploitive material pursuant to paragraph (b)(iv) of this section is a felony punishable by imprisonment for not more than ten (10) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(e) A second or subsequent conviction pursuant to paragraphs (b)(i) through (iv) of this section, or of a substantially similar law of any other jurisdiction, is a felony punishable by imprisonment for not less than seven (7) years nor more than twelve (12) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(f) Any person who is convicted of an offense under this section shall forfeit to the state the person's interest in:

(i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;

(ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;

(iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

FEDERAL LEGISLATION

18 USCS § 1466A (2010). Obscene visual representations of the sexual abuse of children.

a) In general. Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that--

(1) (A) depicts a minor engaging in sexually explicit conduct; and
(B) is obscene; or

(2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite

sex; and

(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1) [18 USCS § 2252A(b)(1)], including the penalties provided for cases involving a prior conviction.

(b) Additional offenses. Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that--

(1) (A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2) [18 USCS § 2252A(b)(2)], including the penalties provided for cases involving a prior conviction.

(c) Nonrequired element of offense. It is not a required element of any offense under this section that the minor depicted actually exist.

(d) Circumstances. The circumstance referred to in subsections (a) and (b) is that--

(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

(e) Affirmative defense. It shall be an affirmative defense to a charge of violating subsection (b) that the defendant--

(1) possessed less than 3 such visual depictions; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction--

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access

to each such visual depiction.

(f) Definitions. For purposes of this section--

(1) the term "visual depiction" includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

(2) the term "sexually explicit conduct" has the meaning given the term in section 2256(2)(A) or 2256(2)(B) [18 USCS § 2256(2)(A) or 2256(2)(B)]; and

(3) the term "graphic", when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

18 USCS § 2252 (2010). Certain activities relating to material involving the sexual exploitation of minors.

(a) Any person who--

(1) knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if--

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or through the mails, if--

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either--

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title [18 USCS § 1151], knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce, or has been shipped or transported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, including by computer, if--

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; or

(4) either--

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title [18 USCS § 1151], knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if--

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

(b)

(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, section 1591 [18 USCS § 1591], chapter 71, chapter 109A, or chapter 117 [18 USCS §§ 2251 et seq., §§ 1460 et seq., 2241 et seq., or 2421 et seq.], or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117 [18 USCS §§ 2251 et seq., §§ 1460 et seq., 2241 et seq., or 2421 et seq.], or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(c) Affirmative defense. It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant--

- (1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and
- (2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof--
 - (A) took reasonable steps to destroy each such visual depiction; or
 - (B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

18 USCS § 2252A (2009). Certain activities relating to material constituting or containing child pornography. [Caution: See prospective amendment note below.]

- (a) Any person who--
 - (1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;
 - (2) knowingly receives or distributes--
 - (A) any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or
 - (B) any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;
 - (3) knowingly--
 - (A) reproduces any child pornography for distribution through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or
 - (B) advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains--
 - (i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or
 - (ii) a visual depiction of an actual minor engaging in sexually explicit conduct;
 - (4) either--
 - (A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151 [18 USCS § 1151]), knowingly sells or possesses with the intent to sell any child pornography; or
 - (B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;
 - (5) either--
 - (A) in the special maritime and territorial jurisdiction of the United States, or on any

land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151 [18 USCS § 1151]), knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

(B) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct--

(A) that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer;

(B) that was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(C) which distribution, offer, sending, or provision is accomplished using the mails or any means or facility of interstate or foreign commerce,

for purposes of inducing or persuading a minor to participate in any activity that is illegal; or

(7) knowingly produces with intent to distribute, or distributes, by any means, including a computer, in or affecting interstate or foreign commerce, child pornography that is an adapted or modified depiction of an identifiable minor.

shall be punished as provided in subsection (b); or

(b)

(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, section 1591 [18 USCS § 1591], chapter 71, chapter 109A, or chapter 117 [18 USCS §§ 2251 et seq., §§ 1460 et seq., 2241 et seq., or 2421 et seq.], or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117 [18

USCS §§ 2251 et seq., §§ 1460 et seq., 2241 et seq., or 2421 et seq.], or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(3) Whoever violates, or attempts or conspires to violate, subsection (a)(7) shall be fined under this title or imprisoned not more than 15 years, or both.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that--

(1) (A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

(B) each such person was an adult at the time the material was produced; or

(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256(8)(C) [18 USCS § 2256(8)(C)]. A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) Affirmative defense. It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant--

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof--

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) Admissibility of evidence. On motion of the government, in any prosecution under this chapter [18 USCS §§ 2251 et seq.] or section 1466A [18 USCS § 1466A], except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in

deciding whether the child pornography depicts an actual minor.

(f) Civil remedies.

(1) In general. Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A [18 USCS § 1466A] may commence a civil action for the relief set forth in paragraph (2).

(2) Relief. In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including--

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

(g) Child exploitation enterprises.

(1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.

(2) A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591 [18 USCS § 1591], section 1201 [18 USCS § 1201] if the victim is a minor, or chapter 109A [18 USCS §§ 2241 et seq.] (involving a minor victim), 110 [18 USCS §§ 2251 et seq.] (except for sections 2257 and 2257A [18 USCS §§ 2257 and 2257A]), or 117 [18 USCS §§ 2421 et seq.] (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

18 USCS APPX § 2G2.2 (2009). Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor. [Caution: See prospective amendment note below.]

(a) Base Offense Level:

(1) 18, if the defendant is convicted of 18 U.S.C. § 1466A(b), § 2252(a)(4), or § 2252A(a)(5).

(2) 22, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; (B) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (C) the defendant did not intend to traffic in, or distribute, such material, decrease by 2 levels.

(2) If the material involved a prepubescent minor or a minor who had not attained the age of 12 years, increase by 2 levels.

(3) (Apply the greatest) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subdivision (E), increase by 6 levels.

(E) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(F) Distribution other than distribution described in subdivisions (A) through (E), increase by 2 levels.

(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

(5) If the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor, increase by 5 levels.

(6) If the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, increase by 2 levels.

(7) If the offense involved--

(A) at least 10 images, but fewer than 150, increase by 2 levels;

(B) at least 150 images, but fewer than 300, increase by 3 levels;

(C) at least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

U.S. TERRITORIES

AMERICAN SAMOA

AM. SAMOA CODE ANN. § 46.4402 (2007). Promoting pornography in the first degree.

(a) A person commits the crime of promoting pornography in the first degree if, knowing its content and character:

(1) he wholesale promotes or possesses with the purpose to wholesale promote any pornographic material; or

(2) he wholesale promotes for minors or possesses with the purpose to wholesale promote for minors any material pornographic for minors.

(b) Promoting pornography in the first degree is a class C felony.

AM. SAMOA CODE ANN. § 46.4403 (2007). Promoting pornography in the second degree.

(a) A person commits the crime of promoting pornography in the second degree if, knowing its content and character, he:

(1) promotes or possesses with the purpose to promote any pornographic material for pecuniary gain; or

(2) produces, presents, directs, or participates in any pornographic performance for pecuniary gain.

(b) Promoting pornography in the second degree is a class D felony.

GUAM

GUAM CODE ANN. tit. 9, § 28.49 (2008). Same: Distribution.

Every person who knowingly sends or causes to be sent, or who in Guam possesses, prepares, publishes, shows, prints or who offers to distribute, distributes or exhibits to another any obscene material, when such act or acts are public or for commercial gain, is guilty of a misdemeanor.

PUERTO RICO

P.R. LAWS ANN. tit. 33 § 4075 (2006). Delivery, transportation, sale, distribution, exhibition or possession of obscene material

(a) Any person who knowingly sends, or has delivered, or transports or has transported, or brings or has someone bring obscene material to Puerto Rico for sale, exhibition, publication or distribution, or who possesses, prepares, publishes or prints any obscene material in Puerto Rico, with the intention of distributing, selling, exhibiting it to others, or offering it for distribution or sale, shall be punished by imprisonment not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500), or both penalties at the court's discretion.

(b) Any person who commits the acts forbidden in subsection (a) of this section, knowing that in such obscene material a child under sixteen (16) years of age is presented

while carrying out or simulating a sexual act, shall be punished upon conviction, by imprisonment for a term of two (2) years to a maximum of four (4) years, or a fine not to exceed fifty thousand dollars (\$50,000), or both penalties at the court's discretion.

(c) The provisions of this section, with regard to the exhibition, or possession with intent to exhibit, of any obscene material shall not apply to any employee, projector operator or movie cameraman who has been employed and who is working at his job, as long as said employee, projector operator or cameraman does not have a financial interest of any kind in the place where he is employed.

P.R. LAWS ANN. tit. 33 § 4077 (2006). Protection of minors

(a) Any person engaging in acts prohibited in §§ 4075 and 4076 of this title for or in the presence of children under sixteen (16) years of age shall be punished by imprisonment for a minimum term of one year and a maximum of three (3) years, or a maximum fine of five thousand dollars (\$5,000), or both penalties at the court's discretion.

(b) The penalty of imprisonment for a minimum term of three (3) years and a maximum of five (5) years shall be imposed on any person who employs, uses, persuades or induces a child under sixteen (16) years of age to engage in, or to induce another child to pose, model or perform sexual acts for the purpose of preparing, printing or exhibiting obscene material, or presenting an obscene spectacle.

(c) Any person who employs, hires or uses a child under sixteen (16) years of age to engage in or help him to engage in any of the forbidden acts in § 4075 of this title shall be punished by imprisonment for a minimum term of one year and a maximum of three (3) years, or a fine not to exceed five thousand dollars (\$5,000), or both penalties at the court's discretion.

VIRGIN ISLANDS

V.I. CODE ANN. tit. 14 § 1024 (2009). Distribution; printing, exhibiting, distributing or possessing

(a) Every person who knowingly, sends or causes to be sent, or brings or causes to be brought, into the Virgin Islands for sale or distribution, or in the Virgin Islands prepares, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor.

(b) Every person who (i) sends or causes to be sent, or brings or causes to be brought into the Virgin Islands for sale or distribution, or (ii) in the Virgin Islands possesses, prepares, publishes or prints, with the intent to distribute or to exhibit to others for commercial consideration, or (iii) who offers to distribute, distributes or exhibits to others for commercial consideration, any obscene matter, knowing that such matter depicts a minor engaging in or simulating sexual intercourse, masturbation, anal-oral copulation, sodomy, bestiality, oral copulation, sexual sadism, sexual masochism, any lewd or lascivious sexual activity, or excretory functions performed in a lewd or lascivious manner is guilty of a felony and shall be fined not less than \$25,000 and not more than \$50,000 or

imprisoned not more than three years, or both.

(c) The provisions of this section with respect to the exhibition of, or the possession with intent to exhibit, any obscene matter shall not apply to a motion picture operator, projectionist or salesperson who is employed by a person licensed in accordance with Virgin Islands law and who is acting within the scope of his employment; Provided That such operator, projectionist or salesperson has no financial interest in the place wherein he is so employed.